

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN B.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C22-5910-BAT

**ORDER AFFIRMING THE  
COMMISSIONER’S DECISION AND  
DISMISSING THE MATTER WITH  
PREJUDICE**

Plaintiff seeks review of the denial of his applications for Supplemental Security Income and Disability Insurance Benefits. He contends the ALJ erred by (1) misevaluating the medical evidence; (2) misevaluating plaintiff’s testimony; and (3) incorrectly assessing residual functional capacity (“RFC”). Dkt. 17. The Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

**BACKGROUND**

Plaintiff is currently 57 years old, attended some college, and has worked as a cook, pantry good maker, kitchen helper, and a laborer in stores. Tr. 78, 325, 329, 338, 1471. The current application was filed in August 2011, but he was permitted at the hearing to reopen a denied July 2010 application and, by extension, a denied September 2010 application, because a determination may be reopened within twelve months “for any reason.” Tr. 15, 269–74, 275–88,

1 1492–92; *see* 20 C.F.R. §§ 404.988, 416.1488. This matter was remanded for new hearings in  
2 2015 and 2021. Tr. 806–18, 1560–61. During proceedings, plaintiff amended his application to  
3 allege a closed period of disability from **May 1, 2009 through March 1, 2015**. Tr. 721, 1492.  
4 His physical limitations stem, however, from a motor vehicle collision in 2002, and an anterior  
5 C6–7 fusion in 2003 that left him with pain, along with numbness and tingling in his arms. Tr.  
6 483. Plaintiff returned to substantial gainful activity on March 1, 2015. Tr. 1455–56.

7 In July 2022, the ALJ held a hearing and issued a decision. Tr. 1452–73, 1489–1520. The  
8 ALJ found that plaintiff meets the insured status requirements through June 20, 2025. Tr. 1455.  
9 The ALJ determined that plaintiff has the severe impairments of cervical degenerative disc  
10 disease with radiculopathy status post C6–7 fusion, generalized anxiety disorder, and dysthymic  
11 disorder. Tr. 1456. The ALJ assessed that plaintiff has the RFC to perform light work with  
12 additional physical and mental limitations: lifting and carrying 25 pounds occasionally and 20  
13 pounds frequently; carrying 10 pounds occasionally and frequently with the right upper  
14 extremity; frequently overhead reaching bilaterally; frequently handling, fingering, and feeling  
15 with the right upper extremity; frequently climbing ramps and stairs; never climbing ladders,  
16 ropes, or scaffolds, or crawling; frequently working at unprotected heights and with moving  
17 mechanical parts; performing simple, routine tasks only; requiring a sit/stand option every 45  
18 minutes for five to ten minutes without being off-task. Tr. 1460. At step four of the sequential  
19 evaluation, the ALJ determined that plaintiff is unable to perform any past relevant work. Tr.  
20 1471. At step five, the ALJ found that plaintiff could perform jobs that exist in significant  
21 numbers in the national economy, such as document preparer, telephone quotation clerk, election  
22 clerk, routing clerk, and collator. Tr. 1472. The ALJ therefore found that plaintiff was not  
23

1 disabled during the closed period from May 1, 2009 through March 1, 2015. Plaintiff allowed the  
2 ALJ's decision to become the Commissioner's final decision and appeals it here. Dkt. 17, at 2.

### 3 DISCUSSION

4 The Court will reverse the ALJ's decision only if it was not supported by substantial  
5 evidence in the record as a whole or if the ALJ applied the wrong legal standard. *Molina v.*  
6 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The ALJ's decision may not be reversed on account  
7 of an error that is harmless. *Id.* at 1111. Where the evidence is susceptible to more than one  
8 rational interpretation, the Court must uphold the Commissioner's interpretation. *Thomas v.*  
9 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). Plaintiff has failed to demonstrate that the ALJ's  
10 decision was marred by harmful factual or legal error when evaluating (1) the medical evidence;  
11 (2) plaintiff's testimony; and (3) RFC.

#### 12 1. Medical Evidence

13 Plaintiff contends that the ALJ failed to properly evaluate the medical evidence by  
14 (a) giving significant weight to the opinion of examining physician Dr. Mark Heilbrunn, M.D.,  
15 without fully accounting for the opined limitations; (b) giving little weight to the opinion of  
16 examining psychologist Dr. Gregory Dorris, Psy.D.; (c) giving great weight to the opinion of  
17 examining psychiatrist Dr. James A. Parker, M.D., without including in the RFC assessment that  
18 plaintiff was limited to simple and *repetitive* tasks; (d) discounting the opinions of examining  
19 psychologist Dr. Terilee Wingate, Ph.D.; (e) discounting the opinion of examining psychologist  
20 Dr. Tasmyn Bowes, Psy.D.; (f) generally mishandling the medical evidence that supported the  
21 severity of plaintiff's limitations; and (g) discounting the non-examining opinions of  
22 psychologists Dr. James Bailey, Ph.D., and Dr. John D. Gilbert, Ph.D., for having relied too  
23 heavily on Dr. Wingate's opinion. Dkt. 17, at 3–10. The Court finds that plaintiff has failed to

1 demonstrate that the ALJ's evaluation of the medical evidence was unsupported by substantial  
2 evidence or tainted by harmful legal error.

3 As a general rule for claims filed before March 2017, as this one was, more weight  
4 should be given to the opinions of treating and examining doctors than to the opinions of doctors  
5 who do not treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995); see 20 C.F.R.  
6 § 404.1527(c)(2); SSR 96-2p. An ALJ may reject the controverted opinions of treating and  
7 examining physicians by citing specific and legitimate reasons. *Lester*, 81 F.3d at 830. "An ALJ  
8 may reject the opinion of a non-examining physician "be reference to specific evidence in the  
9 medical record." *Sousa v. Callahan*, 143 F.3d 1240, 1244 (9th Cir. 1998).

10 **a. Examining Physician Dr. Heilbrunn**

11 Plaintiff contends that the ALJ harmfully erred by giving significant weight to the  
12 October 2011 opinion of examining physician Dr. Heilbrunn without fully accounting for the  
13 opined findings and limitations in the RFC assessment. The Court disagrees because plaintiff  
14 offers an alternative interpretation of Dr. Heilbrunn's opinion that does not undermine the  
15 reasonableness of the ALJ's decision.

16 In his evaluation, Dr. Heilbrunn noted 4.5 of 5 in right-sided grip strength, 4.5 of 5 in  
17 strength of his right upper extremity and atrophy of the right forearm, and decreased sensation at  
18 the right arm in the C8, T1, C6, and C7 dermatomes. Tr. 590. In addition to noting that plaintiff  
19 would not be able to crawl due to right arm pain, Tr. 588, Dr. Heilbrunn opined the following  
20 regarding limitations to his upper extremities:

21 The claimant has manipulative limitations of decreased right arm  
22 and grip strength and decreased feeling in the right hand and part  
23 of the forearm. He is also limited in above-shoulder-level reaching  
with both arms secondary to neck pain. He would be able to  
function in handling of objects but has some difficulty because of  
decreased sensation and fine-dexterous movements.

1 Tr. 591. Dr. Heilbrunn opined that plaintiff “has a maximum lifting/carrying capacity of 25 lbs.  
2 occasionally and 20 lbs. frequently with the left arm; with the right he is less than 10 lbs. both  
3 occasionally and frequently.” Tr. 591. The ALJ gave significant weight to Dr. Heilbrunn’s  
4 opinion as consistent with examination findings and the record, and integrated physical  
5 limitations into the RFC assessment on lifting and carrying; overhead reaching; handling,  
6 fingering, and feeling; climbing ladders, ropes, or scaffolds, or crawling; and working at heights.  
7 Tr. 1460, 1467. The ALJ went beyond Dr. Heilbrunn’s recommendations by assessing an RFC  
8 that required a sit/stand option, though Dr. Heilbrunn opined “the physical examination findings  
9 [show] he would have no limitation in standing.” *Compare* Tr. 1460 *with* Tr. 591. There is no  
10 indication that the ALJ misevaluated Dr. Heilbrunn’s opinion or failed to account for the opined  
11 limitations.

12 Plaintiff concedes that “Dr. Heilbrunn’s description of the nature and extent of  
13 [plaintiff’s] manipulative findings is not completely clear” but nonetheless argues that those  
14 findings could be considered consistent with plaintiff’s testimony of more severe manipulative  
15 limitations on right hand functionality. Dkt. 17, at 4. Similarly, plaintiff argues that Dr.  
16 Heilbrunn’s finding of decreased strength and sensation in his right arm and right hand might  
17 demonstrate that plaintiff should be limited to at most occasional use of his right hand and arm  
18 for reaching, handling, fingering, feeling, and grasping. *Id.* The relevant question on appeal is  
19 not, however, whether Dr. Heilbrunn’s opinion could be interpreted as being supportive of  
20 plaintiff’s testimony; it is whether the ALJ supported the interpretation with substantial evidence  
21 and by applying the correct legal standards. Plaintiff offers an alternative explanation of Dr.  
22 Heilbrunn’s examination findings that does not undermine the reasonableness of the ALJ’s  
23 interpretation.

1 The Court finds that plaintiff has not demonstrated that the ALJ's evaluation of Dr.  
2 Heilbrunn's opinion and use of it in the RFC assessment was unsupported by substantial  
3 evidence or the result of harmful legal error.

4 **b. Examining Psychologist Dr. Dorris**

5 Plaintiff argues that the ALJ discounted the June 2010 opinion of examining psychologist  
6 Dr. Dorris by citing an internal consistency that does not exist and without discussing or  
7 evaluating Dr. Dorris's findings. Dkt. 17, at 4–5. Although the ALJ rejected Dr. Dorris's opinion  
8 rather summarily, plaintiff is unable to demonstrate harmful error because nothing in Dr.  
9 Dorris's opinion undermines the reasonableness of the limitations assessed in the RFC.

10 The ALJ discounted Dr. Dorris's recommendation that plaintiff apply for disability  
11 benefits because it was internally inconsistent with the doctor's simultaneous recommendation to  
12 pursue vocational, training, education, and volunteer options that would increase his  
13 employability for jobs with reduced functional demands. Tr. 1469 (citing 473–74). Although  
14 plaintiff notes that participation in a vocational training program may not immediately disqualify  
15 a person from receiving benefits, *see* 20 C.F.R. § 404.316(c), it was not unreasonable for the ALJ  
16 to presume that Dr. Dorris's recommendation about vocational training might be suggesting  
17 employability in the unspecified future. Regardless, even if the ALJ was incorrect in presuming  
18 the opinion's internal inconsistency, the greater deficiency of the opinion is that Dr. Dorris, in  
19 recommending that plaintiff apply for benefits, was referring to a question expressly reserved to  
20 the Commissioner without specifying limitations that would suggest disability. Plaintiff is unable  
21 to identify any opined limitations not already addressed in the RFC. For example, though  
22 plaintiff notes that Dr. Dorris observed that plaintiff was moderately anxious, spoke rapidly, and  
23 demonstrated some pressure of speech and tangentiality, Dr. Dorris never opined how such

1 behavior might affect plaintiff's functionality. Dkt. 17, at 5 (citing Tr. 471). Instead, contrary to  
2 plaintiff's contention, Dr. Dorris's opinion can reasonably be read as supportive of the RFC  
3 assessment. For example, Dr. Dorris opined that plaintiff had a global assessment of functioning  
4 ("GAF") score of 65, which suggests only some mild symptoms or some difficulty in social,  
5 occupational, or school functioning, but generally functioning pretty well. Tr. 474; *see* AM.  
6 PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-IV),  
7 34 (4th ed. text rev. 1994).

8 The Court finds that plaintiff has not demonstrated that the ALJ harmfully erred as a  
9 matter of fact or law by discounting Dr. Dorris's opinion.

10 **c. Examining Psychiatrist Dr. Parker**

11 Plaintiff contends that although the ALJ gave great weight to the September 2010  
12 examining opinion of Dr. Parker, he failed to include in the RFC assessment the restriction to  
13 simple and *repetitive* tasks. Plaintiff is correct, but the error is harmless because at step five of  
14 the sequential analysis the ALJ referred to several occupations plaintiff can perform that exist in  
15 significant numbers in the national economy that are restricted to simple and repetitive tasks.

16 Dr. Parker noted that plaintiff was currently working 16 hours per week as a part-time  
17 chef and "is able to do simple and *repetitive* tasks with normal pace and accuracy." Tr. 480  
18 (emphasis added). The ALJ gave great weight to Dr. Parker's opinion, Tr. 1469, but determined  
19 that plaintiff has the RFC to perform "simple, *routine* tasks only," Tr. 1460 (emphasis added).  
20 The Commissioner concedes that the ALJ erred by not including in the RFC the limitation to  
21 "repetitive work" but argues that this error was harmless given that occupations named in the  
22 step five analysis satisfy this requirement. Dkt. 23, at 11–12. The Commissioner is correct.  
23

1 At step five, the ALJ determined that plaintiff could perform jobs existing in significant  
2 numbers that constitute “repetitive work”: routing clerk, with approximately 58,950 jobs  
3 nationally; and collator, with approximately 16,500 jobs nationally; and both numbers accounted  
4 for plaintiff’s manipulative and exertional limitations. Tr. 1472 (reducing full number by 50% to  
5 account for additional limitations). Plaintiff responds that the jobs of routing clerk and collator  
6 do not qualify as *simple* work because they require level 2 reasoning, which is defined as “Apply  
7 commonsense understanding to carry out *detailed but uninvolved* written or oral instructions.  
8 Deal with problems involving a few concrete variables in or from standardized situations.” Dkt.  
9 27, at 9 (quoting *Dictionary of Occupational Titles*, Appendix C, available at 1991 WL 688702)  
10 (emphasis added). Plaintiff has not, however, addressed the numerous cases within the Ninth  
11 Circuit that have held that the ability to perform simple, routine, and repetitive tasks is equivalent  
12 to level 2 reasoning. *See Kellina M. v. Commissioner of SSA*, 2023 WL 6239638, at \*3 (D. Or.  
13 Sept. 26, 2023) (holding that the ability to perform simple, routine, and repetitive tasks is  
14 consistent with level 2 reasoning); *Miller v. Kijakazi*, 2021 WL 5768811, at \*8 (D. Ariz. Dec. 6,  
15 2021) (“[A] limitation to work involving only ‘simple tasks,’ ‘simple, repetitive tasks,’ or  
16 ‘simple, routine, repetitive work,’ is consistent with the ability to perform Level 2 Jobs.”) (citing  
17 *Zavalin v. Colvin*, 778 F.3d 842, 847 (9th Cir. 2015)); *Coleman v. Astrue*, 2011 WL 781930, at  
18 \*5 (C.D. Cal. Feb. 28, 2011) (“The Court recognizes, as defendant points out, that the weight of  
19 prevailing authority precludes a finding of any inconsistency between a reasoning level of two  
20 and a mere limitation to simple, repetitive tasks or unskilled work.”); *see also Davis v. Saul*, 846  
21 F. App’x. 464 (9th Cir. 2021) (“Simple work is consistent with positions requiring Reasoning  
22 Level 2.”); *Ranstrom v. Colvin*, 622 F. App’x 687, 688 (9th Cir. 2015) (“There is no appreciable  
23 difference between the ability to make simple decisions based on ‘short, simple instructions’ and



1 the ability to use commonsense understanding to carry out “detailed but uninvolved ...  
2 instructions,’ which is what Reasoning Level 2 requires.”); *Abrew v. Astrue*, 303 F. App’x 567,  
3 569 (9th Cir. 2008) (holding “there was no conflict between the ALJ’s step five determination  
4 that Abrew could complete only simple tasks and the vocational expert’s testimony that Abrew  
5 could do jobs that the U.S. Department of Labor categorizes at “Reasoning Level 2”); *Lara v.*  
6 *Astrue*, 305 Fed. App’x. 324, 326 (9th Cir. 2008) (“[S]omeone able to perform simple, repetitive  
7 tasks is capable of doing work requiring more rigor and sophistication—in other words,  
8 Reasoning Level 2 jobs.”); *cf. Zavalin v. Colvin*, 778 F.3d 842, 846–47 (9th Cir. 2015) (holding  
9 that while a residual functional capacity limited to “simple, routine, or repetitive work” may  
10 conflict with Reasoning Level 3, it does not appear to conflict with the ability to perform  
11 Reasoning Level 2 positions).

12 The Court finds that the ALJ erred by failing to include in the RFC assessment Dr.  
13 Parker’s restriction to simple and *repetitive* tasks. This error was, however, harmless because at  
14 step five the ALJ set forth occupations existing in significant numbers in the national economy  
15 that plaintiff can perform consistent with an RFC restriction to simple and repetitive tasks.

16 **d. Examining Psychologist Dr. Wingate**

17 Plaintiff contends that the ALJ improperly discounted the December 2011 and February  
18 2015 opinions of examining psychologist Dr. Wingate. The Court disagrees.

19 The ALJ gave Dr. Wingate’s December 2011 opinion only some weight because (1) the  
20 doctor relied heavily on plaintiff’s reported symptoms, which were not consistent with the  
21 medical and other evidence; (2) the opinion did not specifically describe plaintiff’s level of  
22 functioning; and (3) it was inconsistent with the doctor’s fairly unremarkable mental status  
23 examination of plaintiff. Tr. 1470 (citing Tr. 1211–12). These are specific and legitimate reasons

1 for discounting Dr. Wingate’s December 2011 opinion. First, as discussed *infra*, the ALJ  
2 reasonably discounted plaintiff’s symptom testimony. Second, the entirety of Dr. Wingate’s  
3 opinion regarding the effect of symptoms on plaintiff’s ability to work was:

4 Depressed mood impacts his ability to sustain a regular  
5 daily/weekly work schedule. He has some difficulty handling  
6 stress. He does get along well with others, but might work best  
7 away from the public due to anxiety.

8 Tr. 1211. That is, Dr. Wingate never specified to what extent plaintiff’s depressed mood would  
9 impact his work schedule, to what extent stress would impact work capacity, and whether  
10 working away from the public was recommended or simply suggested since, despite anxiety,  
11 plaintiff got along well with others. Third, Dr. Wingate detailed an unquestionably benign mental  
12 status examination of plaintiff. Tr. 1211–12. Moreover, in 2010 plaintiff reported weekly social  
13 activities and participating in them “about the same” as he did before his health difficulties while  
14 handling stress “fairly well” and changes in routine “very well,” Tr. 366, 369; and in 2014  
15 plaintiff self-reported that he engaged in social activities daily and handled stress and changes in  
16 routine “well.” Tr. 1042, 1044.

17 The ALJ gave Dr. Wingate’s February 2015 opinion only some weight:

18 [T]he doctor’s concerns about the claimant’s ability to attend to  
19 tasks, handle stress and work with others are clearly cautious as the  
20 claimant testified, he began looking for work the same month as  
21 this exam, and actually accepted a skilled position (kitchen  
22 manager) the following month that only ended because the  
23 restaurant closed. Furthermore, the claimant found other work  
shortly afterward and had successfully maintained that  
employment. The opined interaction limitations are also  
inconsistent with the claimant’s statements. He reported having no  
problem getting along with others (5E). He reported he got along

1 with authority figures “very well” (5E). He reported that he was a  
2 “well liked person” (25E).<sup>1</sup>

3 Tr. 1470 (citing Tr. 1389–92); *see* Tr. 367–69; 1042–44. In other words, the ALJ found Dr.  
4 Wingate’s limitations on plaintiff to be overstated because plaintiff returned to work at a higher-  
5 than-opined functioning capacity only a month later and also personally reported a higher  
6 capacity for social interactions. These reasons for discounting Dr. Wingate’s opinion are specific  
7 and legitimate. Plaintiff’s arguments to the contrary offer no rebuttal to the ALJ’s reasonable  
8 interpretation of Dr. Wingate’s opinion. Dkt. 17, at 5–6; Dkt. 27, at 3.

9 The Court finds that plaintiff has not demonstrated that the ALJ harmfully erred by  
10 discounting Dr. Wingate’s opinions.

11 **e. Examining Psychologist Dr. Bowes**

12 Plaintiff contends that the ALJ improperly discounted the July 2014 opinion of  
13 examining psychologist Dr. Bowes. The Court disagrees and, regardless, any resulting error was  
14 harmless.

15 Dr. Bowes opined that plaintiff had moderate limitations in four domains of basic work  
16 activities: understand, remember, and persist in tasks by following detailed instructions;  
17 communicate and perform effectively in a work setting; complete a normal workday and work  
18 week without interruptions from psychologically based symptoms; and maintain appropriate  
19 behavior in a work setting. Tr. 1166. In the other nine domains, plaintiff had “None or Mild”  
20 limitations. Tr. 1166–67. The ALJ gave Dr. Bowes’s opinion “some weight because the doctor  
21 examined the claimant and it is generally consistent with the doctor’s fairly unremarkable mental  
22

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23 <sup>1</sup> The ALJ also noted that plaintiff told Dr. Wingate that he was experiencing panic episodes every six months but testified at the hearing that he had daily problems with anxiety. Tr. 1470; *see* .

1 status examination” but noted that “the opinion does not specifically describe the claimant’s  
2 level of functioning.” Tr. 1470. That is, first, the mental status examination of plaintiff showed  
3 that he was within normal limits in appearance, speech, attitude and behavior, mood, affect,  
4 thought process and content, orientation, perception, memory, fund of knowledge, concentration,  
5 abstract thought, and insight and judgment; and second, Dr. Bowes did not specify how moderate  
6 limitations in four domains could be translated into an RFC assessment or workplace restrictions  
7 in light of having none/mild restrictions in all other areas. The ALJ cited specific and legitimate  
8 reasons for discounting Dr. Bowes’s opinion.

9 First, plaintiff’s benign mental status examination suggested that Dr. Bowes relied on the  
10 administered Beck depression and anxiety inventory scores showing moderate depression and  
11 anxiety scores when determining that plaintiff had moderate limitations in four mental domains.  
12 Tr. 1164–65. Dr. Bowes stated upfront that “[a]ll information gathered is per client report,” Tr.  
13 1163, such that, coupled with having reviewed only Dr. Wingate’s December 2011 opinion, to  
14 the extent plaintiff’s symptom testimony and Dr. Wingate’s opinion could be reasonably  
15 discounted, so too could Dr. Bowes’s opinion. Second, it was not unreasonable to infer that by  
16 assessing an RFC that limited plaintiff to performing simple, routine tasks only, the ALJ indeed  
17 gave “some weight” to Dr. Bowes’s opinion and integrated a measure of the opined moderate  
18 limitations. Tr. 1166; *see, e.g., Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1173–74 (9th Cir.  
19 2008). For example, Dr. Bowes did not opine that any of those moderate limitations would  
20 necessitate a particular number of absences or preclude working with others. Rather, Dr. Bowes  
21 opined that plaintiff had none or minor limitations in numerous areas consistent with the RFC  
22 limitation to simple, routine work, such as: understanding, remembering, and persisting in tasks  
23 by following very short and simple instructions; performing activities within a schedule,

1 maintaining regular attendance, and being punctual without special supervision; learning new  
2 tasks; performing routine tasks without special supervision; adapting to changes in a routine  
3 work setting; and making simple work-related decisions. Tr. 1166.

4 Thus, even presuming the ALJ erred by giving only some weight to Dr. Bowes's opinion,  
5 the error is harmless because the ALJ assessed an RFC that reasonably accommodated the  
6 moderate limitations and identified jobs that were consistent with those limitations. By limiting  
7 plaintiff to simple, routine work, the ALJ addressed moderate limitations to plaintiff's  
8 understanding, concentration, persistence, and pace, such as his ability to understand detailed  
9 instructions; communicate and perform effectively in a work setting; and complete a normal  
10 workweek without psychological interruption. Tr. 1166. At step five of the sequential evaluation,  
11 the ALJ identified the jobs of router clerk and collator operator, occupations that involve  
12 significant interaction with things but not with people. Tr. 1472; DOT 222.687-022 (Routing  
13 Clerk), *available at* 1991 WL 672133; DOT 208.685-010 (Collator Operator), *available at* 1991  
14 WL 671753. Furthermore, Dr. Bowes opined that plaintiff's "difficulty working appears to be  
15 primarily related to his physical health rather than his mental health," and, even then, plaintiff  
16 would be impaired for under twelve months. Tr. 1167.

17 The Court finds that plaintiff has not demonstrated that the ALJ harmfully erred as a  
18 matter of fact or law by discounting Dr. Bowes's opinion.

19 **f. Other Medical Evidence**

20 Plaintiff sets forth medical evidence that he contends is supportive of his testimony and  
21 the favorable medical evidence. Dkt. 17, at 7–10. Such "[b]are assertions and lists of fact  
22 unaccompanied by analysis and completely devoid of caselaw fall short of the requirement" for  
23 appellate review. *Sekiya v. Gates*, 508 F.3d 1198, 1200 (9th Cir. 2007). This is an accurate

1 characterization of plaintiff's discussion of "other medical evidence": plaintiff has recited  
2 medical findings devoid of any meaningful argumentation. Plaintiff has failed to indicate how  
3 the ALJ harmfully erred as a matter of fact or law by considering the other medical evidence and  
4 declining to find that the medical evidence irrefutably supported plaintiff's symptom testimony.

5 **g. Non-Examining Opinions**

6 **i. Non- Examining Psychologists Drs. Bailey and Gilbert**

7 Plaintiff contends that the ALJ erred by giving only some weight to the 2015 opinions of  
8 non-examining psychologists Drs. Bailey and Gilbert because they relied too heavily on Dr.  
9 Wingate's opinion. Dkt. 17, at 10 (citing Tr. 1469); *see* Tr. 834–36, 848–50, 864–66, 878–80.  
10 The Court finds no harmful error in discounting the opinions of Drs. Bailey and Gilbert because,  
11 as discussed earlier, the ALJ stated specific and legitimate reasons for discounting Dr. Wingate's  
12 opinions.

13 **ii. Non-Examining Physician Dr. Saue**

14 Plaintiff contends that the ALJ erred by giving great weight to the opinion of non-  
15 examining physician Dr. Saue because the doctor improperly "adopted" the ALJ's February  
16 2013 decision, though that decision was not a final decision at that time, as it was still being  
17 appealed, and it was ultimately reversed. Dkt. 17, at 10 (citing Tr. 868, 1467). The Court finds  
18 that plaintiff has not demonstrated that the ALJ committed harmful error by relying on Dr.  
19 Saue's opinion.

20 Dr. Saue opined that plaintiff could perform light work with additional physical  
21 limitations. In doing so, the doctor explained that the February 2013 ALJ decision, Tr. 15–29,  
22 referring only to physical impairments, was adopted with respect to physical impairments, even  
23 though on reconsideration there were other mental limitations to consider. Tr. 868. The ALJ gave

1 this decision “great weight because the doctor had the benefit of reviewing the medical evidence  
2 and it is consistent with the physical restrictions from the previous decision.” Tr. 1467. This was  
3 error. In 2015, this Court reversed the ALJ’s 2013 opinion because the RFC had failed to account  
4 for examining psychiatrist Dr. Parker’s opinion that plaintiff was limited to simple and repetitive  
5 tasks. Tr. 813–816. The error was harmless because Dr. Saue was not addressing the mental  
6 limitation assessed by Dr. Parker to simple and repetitive tasks; the current ALJ’s decision  
7 integrated Dr. Parker’s restriction in the RFC, albeit in the form discussed *supra* as “simple,  
8 routine tasks only”; and the current RFC contains physical limitations that are more detailed and  
9 restrictive than those contained in the 2013 ALJ decision. *Compare* Tr. 21 *with* Tr. 1460. The  
10 ALJ thus did not rely on Dr. Saue’s opinion in a manner that undermined the substantial  
11 evidence supporting the current decision.

12 Plaintiff has failed to demonstrate that the ALJ harmfully erred as a matter of fact or law  
13 by giving great weight to Dr. Saue’s opinion.

## 14 **2. Plaintiff’s Testimony**

15 Plaintiff contends that the ALJ failed to give specific, clear, and convincing reasons for  
16 rejecting plaintiff’s symptom testimony. Dkt. 10, at 9–14; *see Lambert v. Saul*, 980 F.2d 1266,  
17 1277 (9th Cir. 2020). The Court disagrees.

18 In the RFC assessment, the ALJ accounted for plaintiff’s allegations of debilitating neck  
19 pain and difficulties using his arms by restricting plaintiff to light work, except he could lift 25  
20 pounds occasionally and 20 pounds frequently, carry 10 pounds occasionally and frequently with  
21 the right upper extremity, and required a sit/stand option every 45 minutes, as well as other  
22 manipulative, postural, and environmental limitations. Tr. 1160. The ALJ also considered  
23 plaintiff’s anxiety and depression and limited him to simple, routine tasks. *Id.* The ALJ stated

1 several reasons for discounting plaintiff's allegations regarding the severity of his symptoms:  
2 (1) plaintiff's activities were incompatible with his allegations; (2) plaintiff worked during the  
3 period at issue; (3) plaintiff returned to work at the end of the period with no evidence that his  
4 condition had improved; (4) the objective evidence was inconsistent with his allegations; and  
5 (5) plaintiff's treatment history was incompatible with his testimony. Tr. 1462–66. These reasons  
6 for discounting plaintiff's symptom allegations were specific, clear and convincing.

7 First, the record is replete with activities that suggested a greater functionality than  
8 plaintiff's allegations of being able to stand and sit for only fifteen minutes at a time; lifting  
9 between two and ten pounds and concentrating only for short periods; problems with grasping  
10 items; and debilitating pain and severe depression and anxiety. Tr. 1460–61 (citing Tr. 421, 766,  
11 1043, 1055, 1502). Plaintiff played basketball, handball, and rode bikes with friends, Tr. 1211;  
12 lifted weights and did pushups for exercise, Tr. 1210; played cards, played dice, and engaged in  
13 woodworking, Tr. 367, 766, 1042, 1210; engaged in daily activities such as shopping for  
14 groceries, washing the dishes, mowing the lawn, driving, carrying his laundry from his trailer to  
15 his parent's house on the property, visiting friends several times a week, and going to church, Tr.  
16 365–67, 423, 1040–42, 1051–52, 1054; and admitted to being able to follow written and spoken  
17 instructions well, finish what he started, and handle stress and changes in routine well, Tr. 368–  
18 69, 1043–44. In September 2010, an examining physician noted that plaintiff “did not appear to  
19 have any limitations in his activities of daily living as a result of his neck pan.” Tr. 1463 (citing  
20 Tr. 483). In October 2011, plaintiff admitted that he was not limited in walking or sitting and that  
21 he could stand for one hour uninterrupted. Tr. 1463 (citing Tr. 587). Moreover, examining  
22 psychologist Dr. Enid Griffin, Psy.D., noted that plaintiff liked “to spend time outdoors hiking,”  
23



1 engaged in woodwork, could take care of his daily living activities without any issues, and  
2 socialized frequently. Tr. 595–96.

3 Second, plaintiff worked during the period at issue in a manner that suggested he was less  
4 debilitated than he alleged. *See Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020) (“An ALJ may  
5 consider any work activity, including part-time work, in determining whether a claimant is  
6 disabled . . .”). In addition, an ALJ may reject a claimant’s testimony when the claimant  
7 stopped working for non-disability stated reasons. *See, e.g., Bruton v. Massanari*, 268 F.3d 824,  
8 828 (9th Cir. 2001) (affirming the ALJ’s decision to discount pain testimony because, among  
9 other reasons, claimant stated that he left his job because he was laid off, rather than because he  
10 was injured). From July 2009 to June 2010, plaintiff worked as a chef for 30 hours a week. Tr.  
11 322, 594. In July 2010, plaintiff worked 10 hours a week at a catering company but stopped six  
12 months later due to “lack of work.” Tr. 322, 594. From May 2010 to September 2010, plaintiff  
13 worked as a chef for 20 to 25 hours a week. Tr. 390. From October 2010 to January 2011,  
14 plaintiff worked as a laborer for 35 to 40 hours a week, lifting 50 pounds, and was let go from  
15 job due to allegations of stealing. Tr. 594, 607, 757.

16 Third, although plaintiff alleges a closed period of disability from May 1, 2009, through  
17 March 1, 2015, the ALJ found that the record “does not show significant improvement in [his]  
18 condition that led to his return to work.” Tr. 1466. It is undisputed that plaintiff returned to  
19 substantial gainful activity as a kitchen manager in March 2015. Tr. 758, 1010–12, 1079, 1097.  
20 Plaintiff testified that his anxiety was “the same” now that he was working as it was before he  
21 returned to work, and that his ability to lift with his right hand was “the same” as it was before he  
22 returned to work. Tr. 761, 764. It was therefore reasonable for the ALJ to find that a return to  
23 full-time work with no indication that his symptoms had actually improved was a reason to

1 discount plaintiff's symptom testimony. *See, e.g., Guerrero v. Colvin*, 2017 WL 1520016, at \*8  
2 (S.D. Cal. Apr. 26, 2017); *Plotts v. Astrue*, 2009 WL 507486, at \*4 (D. Or. Feb. 26, 2009). The  
3 Court rejects plaintiff's unsubstantiated argument that "the record shows gradual improvement  
4 which led to [plaintiff] being able to return to full-time work in March 2015." Dkt. 17, at 14.

5 Fourth, the ALJ reasonably determined that the objective medical evidence was  
6 inconsistent with the severity of plaintiff's symptom allegations. Such medical evidence included  
7 generally benign physical and mental-status examinations. Tr. 479–80, 483–86, 526, 534, 584,  
8 595–96, 599, 642, 646, 648, 655, 1167–68, 1212, 1323, 1370–71, 1373, 1391, 1415, 1786.

9 Fifth, the ALJ reasonably discounted plaintiff's system testimony due to its inconsistency  
10 with his treatment history. The ALJ cited "minimal mental health treatment" during the period at  
11 issue consisting of psychotherapy and the periodic use of medications that were "effective" and  
12 worked "fairly well" to reduce his symptoms. Tr. 1465 (citing Tr. 594–95); *see* Tr. 1164, 1338,  
13 1390). Similarly, the ALJ noted minimal treatment for plaintiff's neck condition in 2014 and  
14 early 2015, while much of his treatment in 2014 focused on low back pain that resolved after a  
15 few months. Tr. 1465 (citing Tr. 760); *see* Tr. 1310–83, 1412–18. Similarly, 2011 physical  
16 therapy records indicated that plaintiff was "doing better" overall. Tr. 1464 (citing Tr. 568).

17 Plaintiff has not demonstrated that the ALJ harmfully erred as a matter of fact or law by  
18 discounting his testimony about the severity of his symptoms.

### 19 **3. RFC**

20 Plaintiff contends that the ALJ assessed a harmfully erroneous RFC by misevaluating the  
21 medical evidence and his symptom testimony. The Court has rejected plaintiff's allegations  
22 regarding the ALJ's evaluation of the medical evidence and plaintiff's symptom testimony and  
23 therefore rejects plaintiff's claim of a harmfully erroneous RFC.

**CONCLUSION**

For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is **DISMISSED** with prejudice.

DATED this 17th day of October, 2023.



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BRIAN A. TSUCHIDA  
United States Magistrate Judge